

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1768**

67th Legislature  
2022 Regular Session

Passed by the House February 10, 2022  
Yeas 57 Nays 38

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**Speaker of the House of  
Representatives**

Passed by the Senate March 3, 2022  
Yeas 29 Nays 18

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1768** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 1768**

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Passed Legislature - 2022 Regular Session

**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** House Environment & Energy (originally sponsored by Representatives Duerr, Fitzgibbon, Berry, Macri, Ramel, Pollet, and Hackney)

READ FIRST TIME 01/25/22.

1 AN ACT Relating to updating definitions applicable to energy  
2 conservation projects involving public entities; amending RCW  
3 39.35A.020 and 39.35C.020; reenacting and amending RCW 39.35C.010;  
4 adding a new section to chapter 39.35C RCW; and adding a new section  
5 to chapter 39.35A RCW.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 39.35C.010 and 2011 1st sp.s. c 43 s 248 are each  
8 reenacted and amended to read as follows:

9 (~~Unless the context clearly requires otherwise, the~~) The  
10 definitions in this section apply throughout this chapter unless the  
11 context clearly requires otherwise.

12 (1) "Cogeneration" means the sequential generation of two or more  
13 forms of energy from a common fuel or energy source. If these forms  
14 are electricity and thermal energy, then the operating and efficiency  
15 standards established by 18 C.F.R. Sec. 292.205 and the definitions  
16 established by 18 C.F.R. Sec. 292.202 (c) through (m) apply.

17 (2) (a) "Conservation" (~~means~~) includes reduced (~~energy~~  
18 ~~consumption or energy cost, or increased efficiency in the use of~~  
19 ~~energy, and activities, measures, or equipment designed to achieve~~  
20 ~~such results, but~~);

21 (i) Energy consumption;

1        (ii) Energy demand;  
2        (iii) Energy cost; or  
3        (iv) Greenhouse gas emissions.  
4        (b) "Conservation" does not include thermal or electric energy  
5 production from cogeneration.  
6        (c) "Conservation" also ~~((means))~~ includes reductions in the use  
7 or cost of water, wastewater, or solid waste.  
8        (3) "Cost-effective" means that the present value to a state  
9 agency or school district of the ~~((energy))~~ benefits reasonably  
10 expected to be ~~((saved))~~ achieved or produced by a facility,  
11 conservation activity, measure, or piece of equipment over its useful  
12 life, including any compensation received from a utility or the  
13 Bonneville power administration, is greater than the net present  
14 value of the costs of implementing, maintaining, and operating such  
15 facility, activity, measure, or piece of equipment over its useful  
16 life, when discounted at the cost of public borrowing.  
17        (4) "Department" means the state department of enterprise  
18 services.  
19        (5) "Energy" means energy as defined in RCW 43.21F.025(5).  
20        (6) "Energy audit" has the definition provided in RCW 43.19.670,  
21 and may include a determination of the water or solid waste  
22 consumption characteristics of a facility.  
23        (7) "Energy efficiency project" means a conservation or  
24 cogeneration project.  
25        (8) "Energy efficiency services" means assistance furnished by  
26 the department to state agencies and school districts in identifying,  
27 evaluating, and implementing energy efficiency projects.  
28        (9) "Local utility" means the utility or utilities in whose  
29 service territory a public facility is located.  
30        (10) "Performance-based contracting" means contracts for which  
31 payment is conditional on achieving contractually specified energy  
32 savings.  
33        (11) "Public agency" means every state office, officer, board,  
34 commission, committee, bureau, department, and all political  
35 subdivisions of the state.  
36        (12) "Public facility" means a building ~~((or structure, or a~~  
37 ~~group of buildings or structures at a single site)),~~ structure, group  
38 of buildings or structures at a single site, site improvement, or  
39 other facility owned by a state agency or school district.

1 (13) "State agency" means every state office or department,  
2 whether elective or appointive, state institutions of higher  
3 education, and all boards, commissions, or divisions of state  
4 government, however designated.

5 (14) "State facility" means a building or structure, or a group  
6 of buildings or structures at a single site, owned by a state agency.

7 (15) "Utility" means privately or publicly owned electric and gas  
8 utilities, electric cooperatives and mutuals, whether located within  
9 or without Washington state.

10 **Sec. 2.** RCW 39.35A.020 and 2007 c 39 s 2 are each amended to  
11 read as follows:

12 (~~Unless the context clearly indicates otherwise, the~~) The  
13 definitions in this section (~~shall~~) apply throughout this chapter  
14 unless the context clearly requires otherwise.

15 (1) (a) "Conservation" includes reduced:

16 (i) Energy consumption;

17 (ii) Energy demand;

18 (iii) Energy cost; or

19 (iv) Greenhouse gas emissions.

20 (b) (i) "Conservation" includes reductions in the use or cost of  
21 water, wastewater, or solid waste.

22 (ii) "Conservation" does not include thermal or electric energy  
23 production from cogeneration.

24 (2) "Energy equipment and services" means ((energy management  
25 systems and any equipment, materials, or supplies that are expected,  
26 upon installation, to reduce the energy use or energy cost of an  
27 existing building or facility, and the services associated with the  
28 equipment, materials, or supplies,)):

29 (a) Energy management systems and any equipment, materials,  
30 supplies, or conservation projects that are expected, upon  
31 installation, to reduce the energy use, reduce the energy demand,  
32 reduce the energy cost, or reduce the greenhouse gas emissions, of a  
33 facility; and

34 (b) The services associated with the equipment, materials,  
35 supplies, or conservation projects including, but not limited to,  
36 design, engineering, financing, installation, project management,  
37 guarantees, operations, and maintenance. Reduction in energy use or  
38 energy cost may also include reductions in the use or cost of water,  
39 wastewater, or solid waste.

1 ((+2)) (3) "Energy management system" has the definition  
2 provided in RCW 39.35.030.

3 ((+3)) (4) "Facility" includes a building, structure, group of  
4 buildings or structures at a single site, site improvement, or other  
5 facility owned by a municipality.

6 (5) "Municipality" has the definition provided in RCW 39.04.010.

7 ((+4)) (6) "Performance-based contract" means one or more  
8 contracts for water conservation services, solid waste reduction  
9 services, or energy equipment and services between a municipality and  
10 any other persons or entities, if the payment obligation for each  
11 year under the contract, including the year of installation, is  
12 either: (a) Set as a percentage of the annual energy cost savings,  
13 water cost savings, ~~((+))~~ solid waste cost savings, or benefits  
14 achieved through conservation projects attributable under the  
15 contract; or (b) guaranteed by the other persons or entities to be  
16 less than the annual energy cost savings, water cost savings, ~~((+))~~  
17 solid waste cost savings, or other benefits attributable under the  
18 contract. Such guarantee shall be, at the option of the municipality,  
19 a bond or insurance policy, or some other guarantee determined  
20 sufficient by the municipality to provide a level of assurance  
21 similar to the level provided by a bond or insurance policy.

22 ~~((+5) "Water conservation" means reductions in the use of water  
23 or wastewater.)~~

24 **Sec. 3.** RCW 39.35C.020 and 2001 c 214 s 21 are each amended to  
25 read as follows:

26 (1) Each state agency and school district shall implement cost-  
27 effective conservation improvements and maintain efficient operation  
28 of its facilities in order to minimize energy consumption and related  
29 environmental impacts and reduce operating costs. Each state agency  
30 shall undertake an energy audit and implement cost-effective  
31 conservation measures pursuant to the time schedules and requirements  
32 set forth in chapter 43.19 RCW, except that any state agency that,  
33 after December 31, 1997, has completed energy audits and implemented  
34 cost-effective conservation measures, or has contracted with an  
35 energy service company for energy audits and conservation measures,  
36 is deemed to have met the requirements of this subsection for those  
37 facilities included in the audits and conservation measures. Each  
38 school district shall undertake an energy audit and implement cost-  
39 effective conservation measures pursuant to the time schedules and

1 requirements set forth in RCW 39.35C.025. Performance-based  
2 contracting shall be the preferred method for completing energy  
3 audits and implementing cost-effective conservation measures.

4 (2) The department shall assist state agencies and school  
5 districts in identifying, evaluating, and implementing cost-effective  
6 conservation projects at their facilities. The department, in  
7 consultation with affected public agencies, shall develop and issue  
8 guidelines for cost-effectiveness determination. The purpose of the  
9 guidelines is to define a procedure and method for performance of  
10 cost-effectiveness. The department's assistance to state agencies and  
11 school districts shall include the following:

12 (a) Notifying state agencies and school districts of their  
13 responsibilities under this chapter;

14 (b) Apprising state agencies and school districts of  
15 opportunities to develop and finance such projects;

16 (c) Providing technical and analytical support, including  
17 procurement of performance-based contracting services;

18 (d) Reviewing verification procedures for energy savings; and

19 (e) Assisting in the structuring and arranging of financing for  
20 cost-effective conservation projects.

21 (3) Conservation projects implemented under this chapter shall  
22 have appropriate levels of monitoring to verify the performance and  
23 measure the energy savings over the life of the project. The  
24 department shall solicit involvement in program planning and  
25 implementation from utilities and other energy conservation  
26 suppliers, especially those that have demonstrated experience in  
27 performance-based energy programs.

28 (4) The department shall comply with the requirements of chapter  
29 39.80 RCW when contracting for architectural or engineering services.

30 (5) The department shall recover any costs and expenses it incurs  
31 in providing assistance pursuant to this section, including  
32 reimbursement from third parties participating in conservation  
33 projects. The department shall enter into a written agreement with  
34 the public agency for the recovery of costs.

35 NEW SECTION. Sec. 4. A new section is added to chapter 39.35C  
36 RCW to read as follows:

37 For purposes of this chapter:

38 (1) Conservation may be achieved through the deployment of  
39 distributed energy resources; and

1           (2) Distributed energy resources include, but are not limited to,  
2 energy efficiency projects that are not cogeneration projects, energy  
3 storage, demand response, electric vehicle charging infrastructure,  
4 and grid-interactive efficient buildings.

5           NEW SECTION.   **Sec. 5.**   A new section is added to chapter 39.35A  
6 RCW to read as follows:

7           For purposes of this chapter:

8           (1) Conservation may be achieved through the deployment of  
9 distributed energy resources; and

10          (2) Distributed energy resources include, but are not limited to,  
11 energy efficiency projects that are not cogeneration projects, energy  
12 storage, demand response, electric vehicle charging infrastructure,  
13 and grid-interactive efficient buildings.

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